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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 DANIEL MARIANO,

10 Plaintiff,

11 v.

12 CAROLYN W. COLVIN, Commissioner

13 of Social Security,

14 Defendant.
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16

No. 2:15-cv-0157-SAB

**ORDER ADOPTING, IN PART,
REPORT AND
RECOMMENDATION;
DIRECTING PLAINTIFF TO
PROPERLY SERVE
COMPLAINT**

17 Before the Court is the Report and Recommendation to Dismiss, Without
18 Prejudice, for Lack of Service, ECF No. 10, which was filed on December 31,
19 2015.

20 Magistrate Judge John Rodgers recommends dismissing this action for
21 failing to serve the Office of the United States Attorney. No response to the R & R
22 has been timely filed; however, Plaintiff filed an Amended Complaint on January
23 5, 2016. It appears from the record that Plaintiff has made an attempt to serve his
24 complaint, *see* ECF No. 9.¹ Nevertheless, Plaintiff's efforts do not comport with
25 Fed. R. Civ. P. 4(i), which states:
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28 ¹ It appears that Plaintiff mailed a copy of his complaint via certified mail to the
Social Security Administration, Office of Disability Adjudication and Review, in
**ORDER ADOPTING, IN PART, REPORT AND RECOMMENDATION;
DIRECTING PLAINTIFF TO PROPERLY SERVE COMPLAINT ~ 1**

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought--or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk--or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time.* The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

Spokane, Washington, and also to the Social Security Administration, Office of Disability Adjudication and Review in Falls Church, Virginia.

**ORDER ADOPTING, IN PART, REPORT AND RECOMMENDATION;
DIRECTING PLAINTIFF TO PROPERLY SERVE COMPLAINT ~ 2**

1 The Court agrees with Magistrate Judge Rodgers that the court file
2 indicates that Plaintiff has not complied with Fed. R. Civ. P. 4(i)(1) and that
3 the complaint has not been properly serviced on Defendant. Nevertheless,
4 the Court will give Plaintiff one more try to cure the defect in service.
5 Plaintiff is instructed that failure to follow Fed. R. Civ. P. 4(i)(1)(A) will
6 result in the dismissal of this action, without prejudice.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. The Court adopts, in part, the Report and Recommendation, ECF No. 10.

9 2. Within **14 days** from the date of this Order, Plaintiff is directed to
10 comply with the Fed. R. Civ. P. 4(i) and file with the Court proof that
11 Plaintiff's Complaint and/or Amended Complaint has been properly served.

12 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
13 file this Order and provide copies to counsel.

14 **DATED** this 29th day of February, 2016.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

20 Stanley A. Bastian
21 United States District Judge
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